

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JAMES ZIMMERMANN,

Plaintiff,

Case No. 1:12-CV-751

v.

Hon. Gordon J. Quist

MICHIGAN DEPARTMENT
OF CORRECTIONS, et al.,

Defendants.

/

ORDER ADOPTING REPORT AND RECOMMENDATION

On July 20, 2012, Plaintiff filed a complaint in the instant action naming several defendants. On December 18, 2012, Defendants David Arkesteyn, Christopher Hegensbach, David Pratt, and the Michigan Department of Corrections moved for summary judgment. Plaintiff did not respond to that motion. On July 3, 2013, Magistrate Judge Brenneman issued a Report and Recommendation (R & R), in which he recommended that the Court grant the motion for summary judgment. The Court subsequently adopted the July 3, 2013 R & R.

On May 29, 2013, Defendant Dr. Brian A. Ameel filed a motion for summary judgment, arguing that Plaintiff failed to exhaust his administrative remedies. Plaintiff did not respond to that motion. On February 24, 2014, Magistrate Judge Brenneman issued an R & R, in which he recommended granting Defendant Ameel's motion. Plaintiff filed an Objection, arguing that he attempted to exhaust his administrative remedies related to an alleged assault on February 7, 2012, but that he was prevented from filing grievances after he was transferred to a different facility.

Pursuant to 28 U.S.C. § 636(b)(1), a district court is normally required to review *de novo* those portions of the R & R to which specific objections have been made. Absent compelling reasons, however, that statute does not allow parties to raise before the district court new arguments or issues that were not presented to the magistrate judge. *See Murr v. United States*, 200 F.3d 895, 902 n.1 (6th Cir. 2000). Rather, issues raised for the first time in objections to a magistrate judge's report and recommendation are deemed waived. *See United States v. Waters*, 158 F.3d 933, 936 (6th Cir. 1998) (citing *Marshall v. Chater*, 75 F.3d 1421, 1426-27 (10th Cir. 1996)).

Plaintiff should be well aware of this rule. In the order adopting the July 3, 2013 R & R, the Court made clear that it would not consider Plaintiff's objection because he had not responded to the motion for summary judgment, and thus never presented the arguments contained in his objection to the magistrate judge. Nonetheless, when Dr. Ameer filed a motion for summary judgment, Plaintiff again failed to respond, and again made his argument against summary judgment for the first time in his objection.

Plaintiff argues that he previously raised the argument now before the Court in his objection to the July 13, 2013 R & R, and that the magistrate judge "opened the door" for him to raise the argument at this stage by referencing that document in the February 24, 2014 R & R. Plaintiff has cited no case law in support of this proposition, and the Court is aware of none. Plaintiff's objection to the July 13, 2013 R & R was not before the magistrate judge, but rather before this Court only. Thus, any argument contained therein was not presented to the magistrate judge. Moreover, a review of that document reveals that Plaintiff did not raise the argument included in his current Objection (i.e., that he attempted several times to mail a grievance, but was prevented from doing so).

“The Magistrate Act was not intended to give litigants an opportunity to run one version of their case past the magistrate, then another past the district court.” *Jones-Bey v. Caruso*, No. 1:07-cv-392, 2009 WL 3644801, at *1 (W.D. Mich. Oct. 30, 2009) (internal quotation marks and citation omitted). Because Plaintiff did not raise the argument contained in his Objection before the magistrate judge, the Court declines to consider it. Thus, the Court will adopt the R & R.

Therefore,

IT IS HEREBY ORDERED that the magistrate judge’s February 24, 2014 Report and Recommendation (dkt. # 40) is **ADOPTED** as the Opinion of the Court.

IT IS FURTHER ORDERED that Plaintiff’s Objection to the Report and Recommendation (dkt. # 41) is **OVERRULED**.

IT IS FURTHER ORDERED that Defendant Ameel’s Motion for Summary Judgment (dkt. # 21) is **GRANTED**.

This case is concluded.

A separate judgment will issue.

Dated: March 17, 2014

/s/ Gordon J. Quist
GORDON J. QUIST
UNITED STATES DISTRICT JUDGE